

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

FILE COPY

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID R. KAY, P.T.,  
RESPONDENT.

FINAL DECISION  
AND ORDER  
L S 8807142 MED

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

David R. Kay, P.T.  
2425 Marathon Avenue  
Neenah, Wisconsin 54956

Wisconsin Medical Examining Board  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

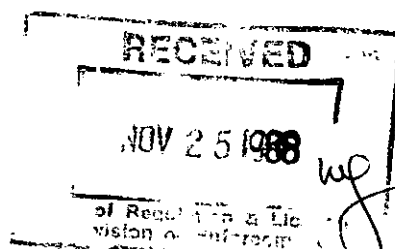
FINDINGS OF FACT

1. David R. Kay, P.T., date of birth January 2, 1947, is a physical therapist licensed to practice physical therapy in the State of Wisconsin. His license which bears number 936 was granted August 20, 1969; and his current address as listed with the Department of Regulation and Licensing is 2425 Marathon Avenue, Neenah, Wisconsin 54956.

2. That during 1987, through mid-September, Respondent was employed as a physical therapist at Theda Clark Regional Medical Center in Neenah, Wisconsin.

3. That on at least one occasion during 1987 while providing physical therapy to a female patient at Theda Clark Regional Medical Center Respondent made inappropriate sexual comments to the patient.

4. Respondent has been disciplined by the Wisconsin Medical Examining Board with a Reprimand by a Final Decision and Order dated May 21, 1987. Conclusion of Law #3 in that Final Decision and Order found:



"That Respondent's conduct in having non-consensual sexual contact with a patient in a therapeutic setting constitutes unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. Med 10.02(2)."

5. Respondent has agreed to voluntarily surrender his license to practice physical therapy in the State of Wisconsin under the terms and conditions set out in the attached Stipulation and in the Order portion of this Final Decision and Order.

#### CONCLUSIONS OF LAW

1. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

2. That the Wisconsin Medical Examining Board has authority to enter into the stipulated resolution of this matter pursuant to secs. 227.44(5) and 448.02(5), Wis. Stats.

3. That Respondent making inappropriate sexual comments to at least one patient, was conduct below the minimal standards of the profession of physical therapy and is unprofessional conduct within the meaning of sec. 448.02(3), Wis. Stats. and Wis. Adm. Code sec. Med 10.02(2).

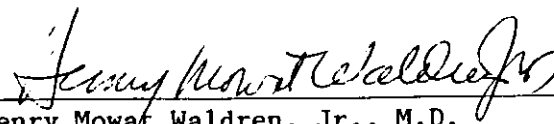
#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the voluntary surrender of David R. Kay's license to practice physical therapy in the State of Wisconsin is hereby accepted, effective the date of this Order.

IT IS FURTHER ORDERED that David R. Kay shall not reapply for a license to practice physical therapy in the State of Wisconsin, for a minimum of two years from the date of this Order. In the event that David R. Kay does apply for a license to practice physical therapy in the State of Wisconsin after the two year period, the burden shall be on David R. Kay to provide evidence satisfactory to the Medical Examining Board that he can practice physical therapy with no danger to patients or the public of his engaging in behavior similar to that found above.

IT IS FURTHER ORDERED that those allegations of the Disciplinary Complaint not included in the above Findings and Conclusions are hereby dismissed, with prejudice.

Dated at Madison, Wisconsin, this 18th day of ~~December~~ <sup>January</sup>, 1988.

  
Henry Mowat Waldren, Jr., M.D.  
Secretary  
Wisconsin Medical Examining Board

HMW:JZ:eaj  
DOEATTY-327

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID R. KAY, P.T.,  
RESPONDENT.

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STIPULATION

It is hereby stipulated and agreed by and between David R. Kay, P.T., Respondent; Timothy Kay, attorney for Respondent; John R. Zwieg, attorney for the Complainant, Wisconsin Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Medical Examining Board as follows:

1. That this Stipulation may be submitted directly to the Wisconsin Medical Examining Board and need not be submitted to Ruby Jefferson-Moore, the hearing examiner appointed in this matter.
2. That in the event that any portion of this Stipulation or proposed Findings of Fact, Conclusions of Law, Order or Final Decision is not accepted by the Wisconsin Medical Examining Board that the entire Stipulation and proposed Findings of Fact, Conclusions of Law, Order and Final Decision shall be void and have no effect. In the event that this resolution is not accepted by the Board, the parties agree not to contend that the Board has been biased in any manner as a result of these documents being presented to the Board in this attempted resolution.
3. That the Respondent and the attorneys for the parties may appear before the Wisconsin Medical Examining Board and argue in favor of acceptance of this Stipulation and the entry and issuance of the attached Final Decision and Order.
4. That David R. Kay, P.T., does not admit to the conduct found in the Findings of Fact made in the attached Final Decision and Order, but pleads no contest and agrees for purposes of this action only that the Wisconsin Medical Examining Board may make and enter the attached Final Decision and Order, without prior notice to any party.
5. That in return for Respondent agreeing to the entry and issuance of the attached Final Decision and Order, Complainant hereby moves the Wisconsin Medical Examining Board for an Order dismissing those allegations of the Complaint which are not included in the Final Decision and Order.
6. That based upon the motion of Complainant the Wisconsin Medical Examining Board agrees to dismiss those allegations of the Complaint which are not included in the Final Decision and Order.
7. That in the event that Respondent ever reapplies for a license to practice physical therapy in the State of Wisconsin that the licensing authority may consider the entire contents of investigative file 87 MED 408, upon which this disciplinary proceeding was based, in determining whether to relicense Respondent.
8. That the Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

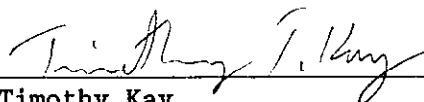
9. That the Wisconsin Medical Examining Board has authority, pursuant to secs. 227.44(5) and 448.02(5), Wis. Stats., to resolve this contested case by stipulation.

Dated this 21st day of November, 1988.



David R. Kay, P.T.  
Respondent

Dated this 21 day of November, 1988.



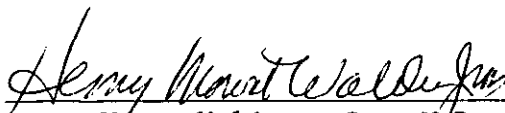
Timothy Kay  
Attorney for Respondent

Dated this 10th day of November, 1988.

  
John R. Zwieg

Attorney for Complainant  
Department of Regulation & Licensing  
Division of Enforcement

Dated this 18th day of ~~December~~ <sup>January</sup>, 1988.



Henry Mowat Waldren, Jr., M.D.  
Wisconsin Medical Examining Board

HMW:JZ:eaj  
DOEATTY-328

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is January 19, 1989.

WLD:dms  
886-490